

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF OKLAHOMA**

In re:

CHESAPEAKE ENERGY
CORPORATION, et al.,¹

Debtors.

Chapter 11

Case No. 20-33233 (DRJ)

(Jointly Administered)

CTF, LTD.; RONALD E. and JUDY L.
CARLTON; RICHARD A. and
CATHERINE A. CARLTON; BRUCE D.
and CATHERINE B. CARLTON; and
LAWRENCE J. FECHKO,

Plaintiffs,

v.

CHESAPEAKE EXPLORATION, L.L.C.,
CHESAPEAKE OPERATING, L.L.C.,
and their affiliated entities,

Defendants.

Adversary No. 21-01019

**CHESAPEAKE’S RESPONSE TO PLAINTIFFS’ COMBINED MOTION TO
DISMISS ACTION, BRIEF IN SUPPORT, AND NOTICE OF OPPORTUNITY
FOR HEARING**

The above-captioned Defendants (collectively, “Chesapeake”) submit this Response to Plaintiffs’ Combined Motion to Dismiss Action, Brief in Support, and Notice

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://dm.epiq11.com/chesapeake>. The location of Debtor Chesapeake Energy Corporation’s principal place of business and the Debtors’ service address in these chapter 11 cases is 6100 North Western Avenue, Oklahoma City, Oklahoma 73118.

of Opportunity for Hearing (ECF No. 12).² Chesapeake does not oppose dismissal with prejudice so long as any such dismissal makes clear that Plaintiffs may not seek damages from the period during which Chesapeake owned the Leases at issue, whether directly from Chesapeake or indirectly. Otherwise, Plaintiffs' dismissal is plainly an attempt to deprive the Houston Bankruptcy Court overseeing Chesapeake's chapter 11 cases of jurisdiction in order to allow Plaintiffs to recover from Chesapeake via Encino. *See Chesapeake Exploration, LLC et al. v. CTF, Ltd., et al*, Case No. 5:21-ap-01021 (W.D. Okla.), ECF No. 1-5 (Encino's Third Party Petition for indemnification against Chesapeake).

A voluntary motion to dismiss under Fed.R.Civ.P. 41(a)(2) is addressed to the sound discretion of the court and a ruling on such a motion is reviewed for an abuse of discretion. *Hurd v. Mondragon*, 851 F.2d 324, 329 (10th Cir.1988). "A plaintiff does not have an absolute right to dismiss..." *Chase v. Ware*, 41 F.R.D. 521 (N.D.Okla. 1967). "When considering a motion to dismiss without prejudice, 'the important aspect is whether the opposing party will suffer prejudice in the light of the valid interests of the parties.'" *Clark v. Tansy*, 13 F.3d 1407, 1411 (10th Cir. 1993), *quoting Barber v. General Electric Co.*, 648 F.2d 1272, 1275 (10th Cir.1981).

In this case, Plaintiffs seek to dismiss their direct claims against Chesapeake, while continuing to pursue against Encino those very same claims (to the extent they relate to the time when Chesapeake owned the Leases). The obvious outcome of that tactic is that if

² "Plaintiffs" refers collectively to CTF, Ltd., Ronald E. and July L. Carlton, Richard A. and Catherine A. Carlton, Bruce D. and Catherine B. Carlton, and Lawrence J. Fechko.

the Plaintiffs prevail against Encino, Encino will pursue its claim for indemnification against Chesapeake, and the entire issue of Encino's liability to Plaintiffs will potentially need to be litigated all over again, resulting in (i) a waste of judicial resources, (ii) impaired ability of the Chesapeake and Encino to secure the necessary witnesses used by Plaintiffs in presenting their case, and (iii) potential inconsistent results. Consequently, allowing Plaintiffs to dismiss their claims against Chesapeake, while preserving their claims against Encino for which Encino has sought indemnification from Chesapeake, cannot help but result in prejudice to the valid interests of Chesapeake and Encino.

Chesapeake does not oppose voluntary dismissal with prejudice so long as Plaintiffs' claims seeking damages for the time period during which Chesapeake owned the Leases are dismissed, whether Plaintiffs are seeking damages directly from Chesapeake or indirectly from Chesapeake through Encino. But to the extent Plaintiffs seek to preserve those claims and assert them through Encino, Chesapeake urges the Court to deny Plaintiffs' Motion.

April 28, 2021

/s/ Ross A. Plourde

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CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2021, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Western District of Oklahoma.

/s/ Ross A. Plourde

Ross A. Plourde